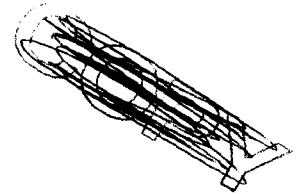


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July 24, 1997

RECEIVED

JUL 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
Room 814
1919 M Street
Washington, D.C. 20554

Re: IB Docket No. 96-220

No. of Copies rec'd 2
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Dear Chairman Hundt:

Orbital Communications Corporation ("ORBCOMM") takes this opportunity to address briefly the July 17, 1997 letter of Leo One USA Corporation ("Leo One"). Leo One's letter attempts to respond to several issues raised in ORBCOMM's letter to you dated June 18, 1997.^{1/} In its June 18 Letter, ORBCOMM had explained its disagreement with several aspects of the International Bureau's proposals as stated at the June 13, 1997 meeting held in your office. ORBCOMM continues to believe that granting its request for a modest amount of additional spectrum to enhance its satellite system will well serve the public interest, will increase inter- and intra-service competition, and will not foreclose competitive entry by the new second round applicants.

ORBCOMM finds it necessary to respond once again to Leo One's excessive rhetoric, misstatements and mischaracterizations of the record in this proceeding.^{2/}

^{1/} Leo One's letter also addresses a letter sent to you on June 23, 1997 from five of the Little LEO applicants concerning the procedural impact of the MobileMedia stay decision on this proceeding, in light of Leo One's owner's role as an officer and director of MobileMedia. See generally, MobileMedia Corporation, FCC 97-197, released June 6, 1997 at ¶ 18.

^{2/} ORBCOMM observes that the pleading appears to be procedurally defective as well (even putting aside its tardiness, insofar as it was filed some 30 days after the ORBCOMM
(continued...)

ORBCOMM's goal in this proceeding is not "to handicap any potential competitors and to place itself in a preeminent competitive position" as alleged by Leo One.^{3/} Rather, ORBCOMM is hoping to speed the completion of this proceeding in a manner that will serve the public interest and ORBCOMM's interest in assuring a broad array of services provided by a broad array of competitors. Unfortunately, without compromise by the applicants, the Commission faces a difficult situation of mutual exclusivity, and possesses only limited tools to address that situation.

Several of the applicants have expressed a willingness to make compromises with respect to their applications, with the notable exception of Leo One. ORBCOMM has indicated that it is willing to compromise on its request to use the Transit Band for its feeder link uplinks, and its use of a more efficient downlink frequency plan results in a request for only 30 kHz of spectrum above the amount already licensed to it in the 137 MHz band. The mutual exclusivity remaining after the compromises appears to be based solely on the contention for the 401 MHz band by both Leo One and Final Analysis Communications Services, Inc. ("Final Analysis"). The X/Y/Z proposal is based on those two applicants sharing the use of the 401 MHz band for service link downlinks (and using the 137 MHz band for feeder link downlinks). Leo One has adamantly opposed that compromise solution.

ORBCOMM supported the X/Y/Z proposal as a means of resolving the mutual exclusivity between Leo One and Final Analysis. Even assuming, *arguendo*, as Leo One asserts, it will not be possible for both systems to share with the Department of Defense in the 401 MHz band, excluding ORBCOMM from the second processing round still does nothing to help resolve the contention for the 401 MHz band by both Leo One and Final Analysis. In order to resolve that mutual exclusivity (without an agreement by those two applicants), the Commission will need to rely upon auctions or a comparative hearing.^{4/}

^{2/}(...continued)

letter to which it responds). The Leo One Letter indicates that it was signed in Robert A. Mazer's name by "AS" (presumably Albert Shuldiner). However, Section 1.52 of the Commission's Rules requires that an attorney sign the pleading in his or her own name. 47 C.F.R. § 1.52. Such a signature, under the Commission's Rules, is a certification that, among other things, there is good ground to support the pleading.

^{3/} Leo One Letter at p. 1.

^{4/} Alternatively, ORBCOMM contends that a strict application of the present financial qualifications standard would likely eliminate both Leo One and Final Analysis, particularly if realistic costs are used for the construction, launch and first year operation of the initial two satellites of the applicant's constellation. See, ORBCOMM Comments on the

Both of these tools for resolving mutual exclusivity have significant infirmities, however. As numerous commenters have demonstrated, auctions for global satellite systems would not comport with the public interest.^{5/} A comparative hearing would likely entail significant delay, and it is not clear on what basis the determination would be made as to which applicants would best serve the public interest. Given these drawbacks to resolving mutual exclusivity, ORBCOMM supported a compromise solution that would allow all the applicants to be licensed. In addition, as the June 23 Letter from five of the applicants indicates, use of a compromise plan (like the X/Y/Z proposal) also allows the Commission to move ahead with the licensing of the remaining applicants while it resolves the significant issues concerning David Bayer's qualification to be a Commission licensee in light of his role at MobileMedia Corporation.^{6/} Thus, the June 23 Letter articulates "the relationship between the Little LEO band plan and the determination of any applicants' qualifications" that Leo One claims to be at a loss to understand.^{7/}

ORBCOMM also disagrees with Leo One's repeated claim that ORBCOMM will be a monopolist, an assertion that is in sharp conflict with the record in this proceeding. Leo One continues to make this claim, notwithstanding the fact that ORBCOMM will be facing competition from numerous sources, including the Big LEOs

^{4/}(...continued)

Application of Final Analysis, February 24, 1995, at pp. 2-4; ORBCOMM Comments on the Application of Leo One, November 16, 1994, at pp. 5-9. To the extent, however, that mutual exclusivity can be eliminated (as under the X/Y/X plan, for example), ORBCOMM observes that the Commission now appears not to apply its financial qualifications tests when mutual exclusivity is absent. See e.g., Constellation Communications, Inc., DA 97-1366, released July 1, 1997; Mobile Communications Holdings, Inc., DA 97-1367, released July 1, 1997.

^{5/} The negative effects of auctions for the Little LEO service are fully detailed in the record in this proceeding and include, among other things, the expectation that such an approach by the United States would encourage sequential auctions in individual countries for landing rights for these global services. Such a development could significantly, if not permanently, delay deployment of the constellations and the provision of low cost Little LEO services to the public.

^{6/} See generally, Opposition of ORBCOMM to Petition of David A. Bayer, July 14, 1997.

^{7/} Leo One Letter at p. 4.

(such as Globalstar that will be offering data and messaging services^{8/}), Geostationary satellites (including QUALCOMM, AMSC and Inmarsat's D+ low-speed data service), foreign-licensed Little LEO systems^{9/} and terrestrial services. Indeed, with regard to this latter category, ORBCOMM observes that the Commission very recently authorized a nationwide, commercial, two-way short-data messaging system to track the location and monitor the status of assets no matter where in the United States they are located.^{10/}

In repeating its claims of ORBCOMM being a "monopolist," Leo One is either deliberately ignoring or misstating what is occurring in the marketplace. In apparent sharp contrast with Leo One, ORBCOMM is active in the marketplace trying to sell its services in competition with these other alternatives, and thus appreciates the highly competitive nature of the market. ORBCOMM believes that Leo One continues its "monopoly" drumbeat to obfuscate the fact that it is seeking an undeserved competitive advantage against ORBCOMM by being the only Little LEO constellation with a 48 satellite constellation.^{11/}

ORBCOMM also denies Leo One's assertion that ORBCOMM is seeking additional spectrum merely to block competition, and that it does not believe the market "in

^{8/} While ORBCOMM believes that its satellite system is better targeted for messaging services than the Big LEOs, those systems can offer competitive services and rates, particularly insofar as their prices could presumably be as low as their incremental costs, which are relatively small. Moreover, it appears that Globalstar specifically targeted this market. AirTouch recently noted in its gateway application that the Globalstar system will support "wireless telephone and telecommunications services, including voice and data communications, as well as position location, short message and emergency services." AirTouch Gateway Earth Station Application, File No. 746-OSE-P/L-97 (Public Notice April 16, 1997) at FCC Form 493 Exhibit D.

^{9/} The Commission is currently evaluating the framework for allowing entry into the U.S. market by foreign-licensed satellite systems in light of the WTO Agreement, which becomes effective January 1, 1998. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, FCC 97-252, released July 18, 1997.

^{10/} Flash Comm, Inc., DA 97-1451, released July 10, 1997 at ¶ 16 ("[The Defense Information Systems Agency] also notes that there are satellite-based alternatives to Flash Comm's system.").

^{11/} ORBCOMM has previously addressed Leo One's hypocritical attempt to paint itself as a benevolent monopolist. See e.g., ORBCOMM Reply Comments in IB Docket No. 96-220, filed January 13, 1997, at n. 42.

Northern Canada and Alaska" is sufficient to justify the "significant cost associated with the construction, launch and operation of twelve additional satellites."^{12/} We appreciate Leo One's concern with our economic welfare and its attempt to predict what will be beneficial for ORBCOMM's bottom line. However, Leo One ignores critical information in its assessment of the profitability of ORBCOMM's proposed enhancement of its satellite system.

As an initial matter, the improved service will cover all of the Northern Latitudes (including Northern Europe and Russia), not just Northern Canada and Alaska as Leo One asserts. Moreover, the improvements in service in those areas due to the expansion of the polar orbiting satellite planes will be dramatic. As an example, the maximum outage period in Alaska will decrease from approximately ten hours to less than five minutes with the deployment of the extra twelve satellites.^{13/} In addition, the reliability of service will increase throughout ORBCOMM's coverage areas as a result of the increase in the number of satellites in the polar planes because of the increased incidents of multiple satellites in view of subscribers. Thus, ORBCOMM will better be able to market its services in Northern Europe and Russia as well as Canada and Alaska, and also offer more reliable service throughout the world. ORBCOMM therefore believes that the proposed addition of twelve satellites will make ORBCOMM a more effective competitor in all markets.

Leo One's assertion regarding the claimed unprofitability of the proposed ORBCOMM system expansion also ignores the fact that ORBCOMM can readily incorporate the production of the additional twelve satellites into the production of the initial satellites. All the ORBCOMM satellite system "up-front" costs have already been incurred, so that the incremental or additional costs of the twelve satellites will be relatively

^{12/} Leo One Letter at p. 2. Leo One also once again claims that ORBCOMM is intending to launch only 28 satellites. ORBCOMM has previously refuted this baseless charge. See Letter from Stephen L. Goodman to Donald Gips, dated January 31, 1997 at pp. 2-3. As ORBCOMM indicated in that response to Leo One:

ORBCOMM has signed a contract to launch 28 satellites, and also has a firm, fixed option to launch the other eight, but initially will place those eight satellites in the role of ground spares. In sum, ORBCOMM still intends to launch 36 satellites, and in fact is seeking in this second processing round access to additional spectrum to support an additional 12 satellites so as to deploy a 48 satellite constellation. ORBCOMM has no intention of warehousing the spectrum, notwithstanding Leo One's unsupported speculation to the contrary.

^{13/} See Attachments to ORBCOMM's June 18 Letter.

inexpensive.^{14/} Moreover, construction of the additional satellites will be very rapid in light of the previous work that has already transpired in creating the production line. Thus, ORBCOMM is ideally positioned to expand its system quickly and relatively cheaply after grant of its modest request being considered in this processing round.

ORBCOMM disagrees with other claims made in the Leo One Letter. For example, ORBCOMM disputes Leo One's claim that it participated in good faith discussions with the other second round applicants.^{15/} ORBCOMM had not been invited to participate in the January meetings cited by Leo One, and so cannot judge their efforts at those meetings. During the subsequent meetings at which ORBCOMM was present, however, Leo One merely indicated that it was unwilling to budge from its demand to have sole access to the 401 MHz band, and even refused to share information with the other applicants that apparently it had already provided to the Commission (but was not yet publicly available from the record in this proceeding).

ORBCOMM also takes issue with Leo One's characterization of several other matters in its Letter of July 17, but does not believe it is fruitful or necessary to become enmeshed in extended debates on these other minor issues. There are, however, a few important points upon which there can be no disagreement. ORBCOMM is now seeking only a net increase of 30 kHz of additional downlink spectrum above its licensed spectrum. That modest amount of spectrum in the 137 MHz band will allow ORBCOMM greatly to enhance the availability and reliability of its satellite services. Moreover, whatever the Commission decides with respect to the competing requests for spectrum in the 401 MHz band by both Leo One and Final Analysis, automatically excluding ORBCOMM from eligibility to obtain the additional 30 kHz of spectrum in the 137 Mhz band in this processing round will not help to resolve that contention for the 401 MHz band. Nor would such a dismissal serve to increase the competitiveness of the marketplace, because granting ORBCOMM's request does not preclude entry by the new second round applicants, and because the market will be highly competitive at any rate. ORBCOMM believes, however, that such an exclusion would be arbitrary and capricious and unlawful retroactive rulemaking, and that the successful Court challenges to such a decision would create delay and uncertainty that can be avoided. For all of these reasons, ORBCOMM

^{14/} As ORBCOMM previously indicated, those up-front costs are very significant. ORBCOMM expended some \$75 million in order to design, construct and launch its initial two satellites and the required ground network.

^{15/} Leo One Letter at n. 3.

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continues to urge the Commission not to adopt a rule that would automatically dismiss ORBCOMM from this processing round.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Goodman".

Albert Halprin
Stephen L. Goodman
Counsel for ORBCOMM

cc: Commissioner Quello
Commissioner Ness
Commissioner Chong
Peter Cowhey
Thomas Tycz
Cecily Holiday
Fern Jarmulnek
Ruth Milkman
Daniel Connors
Harold Ng
Cassandra Thomas
Parties of Record